

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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JAMES ALLEN FRYE ON BEHALF  
OF HIMSELF AND ALL OTHERS  
SIMILARLY SITUATED,

Plaintiffs,

v.

Civil Action No.  
2:07-cv-02708

BAPTIST MEMORIAL HOSPITAL,  
INC. d/b/a BAPTIST MEMORIAL  
HOSPITAL-MEMPHIS, BAPTIST  
MEMORIAL HOSPITAL-  
COLLIERVILLE, AND BAPTIST  
MEMORIAL HOSPITAL FOR  
WOMEN,

Defendant.

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**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
AS TO OPT-IN PLAINTIFF SONYA HERROD**

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Defendant Baptist Memorial Hospital, Inc. d/b/a Baptist Memorial Hospital-Memphis, Baptist Memorial Hospital-Collierville, and Baptist Memorial Hospital for Women (hereafter "Baptist" or "Defendant"), pursuant to Local Rule 7.2, respectfully submits the following Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment as to Opt-In Plaintiff Sonya Herrod: <sup>1</sup>

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<sup>1</sup> These factual allegations are undisputed for purposes of this Motion for Summary Judgment only. Baptist specifically reserves the right to contest any of these factual allegations at any other point in this litigation, including at trial.

### UNDISPUTED MATERIAL FACTS

1. Plaintiff James Frye seeks to maintain an FLSA collective action against Baptist on behalf of hourly employees who allegedly were not compensated for time worked during meal breaks. On September 16, 2008, the Court conditionally certified a class comprised of “hourly employees . . . who were subject to an automatic 30-minute payroll deduction for lunch breaks.” (Rec. Doc. 144, p. 18).

2. Thereafter, Sonya Herrod (hereinafter “Herrod” or “Plaintiff”) consented to become a party to the collective action. Herrod’s consent was filed with the Court on December 18, 2008. (Rec. Doc. 174-27).

3. Herrod began working for Baptist in January 2000 as a pharmacy technician at its location in midtown Memphis. (Herrod Dep. at 18:9-20, attached as Ex. A to Baptist’s Memorandum of Law in Support of its Motion for Summary Judgment).

4. When the location in midtown Memphis closed in November 2000, Herrod transferred to Baptist Memorial Hospital – Memphis where she currently remains employed as a pharmacy technician. (Herrod Dep. at 18:24-19:10, attached as Ex. A to Baptist’s Memorandum of Law in Support of its Motion for Summary Judgment).

5. When Herrod began working at Baptist, she was told she was entitled to take a 30-minute lunch break, which she was expected to take. (Herrod Dep. at 34:17-25, attached as Ex. A to Baptist’s Memorandum of Law in Support of its Motion for Summary Judgment).

6. Herrod does not recall giving up her lunch break or her break being interrupted and not receiving pay for it. (Herrod Dep. at 36:25-37:5, attached as Ex. A to Baptist’s Memorandum of Law in Support of its Motion for Summary Judgment).

7. Herrod admits that she has always received a full 30-minute lunch break during every shift that she has worked at Baptist-Memphis. (Herrod Dep. at 37:6-10, attached as Ex. A to Baptist's Memorandum of Law in Support of its Motion for Summary Judgment).

Respectfully submitted,

/s/ Craig A. Cowart

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Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2010, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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/s/ Craig A. Cowart